

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Claims 35-36 filed in an amendment dated 7/27/01, were never carried through in further amendments of the claims. Additionally, another claim 35 drawn to compound claim and not a method of use claim was added in an amendment dated July 25, 2008. Misnumbered claim 35 added in the amendment dated July 25, 2008, has been renumbered as claim 37.

### ***Election/Restrictions***

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-30, 37, drawn to the compounds of formula I and formula 6.

Group II, claim(s) 35-36, drawn to the method of use of these compounds.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Group I and II are linked by the technical feature of compound of formula I. However, as evidenced by pages 1-2 of the specification, inhibiting the motilin receptor does not make a contribution over the prior art and does not link the product and method claims into a single general inventive concept. If applicants elect the product and if it is found free of the prior art, the method claims may be eligible for rejoinder practice under 821.04(b).

3. During a telephone conversation with Attorney Anne Kornbau on 11/3/08 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-30, 37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 35-36 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### **Examiner's Amendment**

#### **EXAMINER'S AMENDMENT**

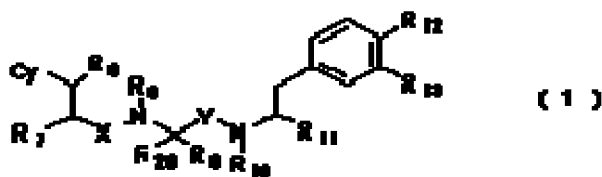
5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Attorney Anne Kornbau on 11/3/08.

The application has been amended as follows:

- A. Claims 35-36 filed 7/27/01 have been cancelled.
- B. The Abstract has been amended to: Substituted phenethylamine compounds of Formula (1) that function as motilin receptor antagonists:

Formula (1):



C. In claim 24, line 2, page 10, the phrase “an effective amount of” is deleted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BINTA M. ROBINSON whose telephone number is (571)272-0692. The examiner can normally be reached on 9:30-6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

\*\*/Binta M Robinson/

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Examiner, Art Unit 1625\*

6.

/Janet L. Andres/

Supervisory Patent Examiner, Art Unit 1625